

interested parties may become involved through the request of the Director, NACIC or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Director, NACIC with a mandatory unclassified finding, to the greatest extent possible, and an optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a first in, first out basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

#### **§ 1802.24 Designation of authority to hear challenges.**

The Director, NACIC is the NACIC authority to hear and decide challenges under this part.

#### **§ 1802.25 Action on challenge.**

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

#### **§ 1802.26 Notification of decision and prohibition on adverse action.**

The Coordinator shall communicate the decision of NACIC to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Coordinator. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to §5.4 of this Order.

### **Subpart D—Right of Appeal**

#### **§ 1802.31 Right of appeal.**

A right of appeal is available to the ISCAP established pursuant to §5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

## **PART 1803—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SECTION 3.6 OF EXECUTIVE ORDER 12958**

### **Subpart A—General**

Sec.

1803.1 Authority and purpose.

1803.2 Definitions.

1803.3 Contact for general information and requests.

1803.4 Suggestions and complaints.

### **Subpart B—Filing of Mandatory Declassification Review (MDR) Requests**

1803.11 Preliminary information.

1803.12 Requirements as to form.

1803.13 Fees.

### **Subpart C—NACIC Action on MDR Requests**

1803.21 Receipt, recording, and tasking.

1803.22 Requests barred by res judicata.

1803.23 Determination by originator or interested party.

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### **Subpart D—NACIC Action on MDR Appeals**

1803.31 Requirements as to time and form.

## § 1803.1

- 1803.32 Receipt, recording, and tasking.
- 1803.33 Determination by NACIC Office Chiefs
- 1803.34 Appeal authority.
- 1803.35 Action by appeals authority.
- 1803.36 Notification of decision and right of further appeal.

### Subpart E—Further Appeals

- 1803.41 Right of further appeal.

AUTHORITY: Section 3.6 of Executive Order 12958 (or successor Orders) and Section 102 of the National Security Act, as amended (50 U.S.C. 403).

SOURCE: 64 FR 49890, Sept. 14, 1999, unless otherwise noted.

### Subpart A—General

#### § 1803.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement §3.6 of Executive Order (E.O.) 12958 (or successor Orders); and Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose.* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

#### § 1803.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

*NACIC* means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

*Days* means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

*Control* means ownership or the authority of NACIC pursuant to federal

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statute or privilege to regulate official or public access to records;

*Coordinator* means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

*Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

*Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

*Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

*NARA* means the National Archives and Records Administration;

*Originator* means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

*Presidential libraries* means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

*Referral* means coordination with or transfer of action to an interested party;

*This Order* means Executive Order 12958 of April 17, 1995 or successor Orders;

## National Counterintelligence Center

## § 1803.23

### § 1803.3 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to the Information and Privacy Coordinator, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 874-5844. For general or status information only, the telephone number is (703) 874-4121. Collect calls cannot be accepted.

### § 1803.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

## Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

### § 1803.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this part. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

### § 1803.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable NACIC to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential

libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for NACIC review. The requester shall also provide sufficient personal identifying information when required by NACIC to satisfy requirements of this part.

### § 1803.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to NACIC will be liable for costs in the same amount and under the same conditions as specified in part 1800 of this chapter.

## Subpart C—NACIC Action on MDR Requests

### § 1803.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

### § 1803.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

### § 1803.23 Determination by originator or interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

#### § 1803.24

(b) *Required determinations.* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* This response shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

#### § 1803.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of NACIC to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Director, NACIC pursuant to §3.6(d) of this Order.

### Subpart D—NACIC Action on MDR Appeals

#### § 1803.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of NACIC's initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

#### § 1803.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

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#### § 1803.33 Determination by NACIC Office Chiefs.

Each NACIC Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

#### § 1803.34 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial denial decisions under E.O. 12958. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

#### § 1803.35 Action by appeals authority.

Action by the Director, NACIC. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

## National Counterintelligence Center

## § 1804.2

### § 1803.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Director, NACIC to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

### Subpart E—Further Appeals

#### § 1803.41 Right of further appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

## PART 1804—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO SECTION 4.5 OF EXECUTIVE ORDER 12958

### Subpart A—General

Sec.

1804.01 Authority and purpose.

1804.02 Definitions.

1804.03 Contact for general information and requests.

1804.04 Suggestions and complaints.

### Subpart B—Requests for Historical Access

1804.11 Requirements as to who may apply.

1804.12 Designations of authority to hear requests.

1804.13 Receipt, recording, and tasking.

1804.14 Determinations by tasked officials.

1804.15 Action by hearing authority.

1804.16 Action by appeal authority.

1804.17 Notification of decision.

1804.18 Termination of access.

AUTHORITY: Section 4.5 of Executive Order 12958 (or successor Orders) and Presidential Decision Directive/NSC 24 “U.S. Counterintelligence Effectiveness,” dated May 3, 1994.

SOURCE: 64 FR 49892, Sept. 14, 1999, unless otherwise noted.

### Subpart A—General

#### § 1804.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); and Presidential Decision Directive/NSC 24, U.S. Counterintelligence Effectiveness, dated May 3, 1994.

(b) *Purpose.* (1) This part prescribes procedures for:

(i) Requesting access to NACIC records for purposes of historical research, or

(ii) Requesting access to NACIC records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and this part do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

#### § 1804.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

*NACIC* means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

*Days* means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

*Control* means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

*Coordinator* means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the historical access program established pursuant to Section 4.5 of this Order;

*Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

*Former Presidential appointee* means any person who has previously occupied a policy-making position in the executive branch of the United States